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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 230

LEE WEI FANG, WANG SIANG-KEN, ET AL.,
Petitioners,

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit affirming judgments of the District Court.

Opinions Below

The opinion of the Court of Appeals has not yet been reported and is set forth in the Appendix at pp. 19-31. The District Court filed no opinion. Its judgments are set forth at pp. 38-39 of the Appendix.

Jurisdiction

The judgment of the Court of Appeals was entered on March 25, 1963. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether deportation may be directed to the Republic of China as the country of which petitioners are subjects, nationals, or citizens where it appears:

(a) That the administrative findings, based upon pleadings and evidence in the deportation proceedings, establish that petitioners are natives and citizens of China;

(b) That the references in such administrative proceedings to "China" were intended to mean the mainland of China, including its Communist government, and now occupied by the People's Republic of China;

(c) That no evidence was adduced during such proceedings to establish either the nationality laws of the Republic of China or that petitioners are in fact citizens or nationals of that country;

(d) That petitioners have alleged that they are in fact nationals and citizens of the People's Republic of China.

2. Whether the District of Columbia Circuit may construe the term "China" in the administrative findings to mean "Republic of China" and bar the petitioners from an opportunity to establish that they are in fact not citizens of the Republic of China where it appears that the Immigration and Naturalization Service, the Second Circuit, as well as earlier decisions of the District of Columbia Circuit, had all previously accepted the term "China" to refer to the Chinese mainland occupied and governed by the People's Republic of China, and where it appears that petitioners had no notice of the intended construction adopted here until after the hearings in the deportation proceedings had been closed.

3. Whether the administrative findings, as construed by the Court of Appeals, are supported by reasonable, sub-

stantial, and probative evidence of citizenship in the Republic of China where it appears that the proof of such citizenship has been derived by the reviewing court from "certified administrative files", and is based largely upon statements by the petitioners that they do not wish to return to Communist China and upon the fact that they have left the jurisdiction of that country, but without evidence of the effect of such conduct upon their nationality under either the municipal law of the People's Republic of China or of the Republic of China.

4. Whether the District of Columbia Circuit may, as a court of equity, decline to review petitioners' claims that the Attorney General's directives that they be deported to Formosa and to Hong Kong are not in conformity with Section 243(a) of the Immigration and Nationality Act, for failure to ascertain whether the country of their citizenship, which they claim is the People's Republic of China, is willing to accept them, upon the ground that they do not in fact wish to be deported to that country.

Statute Involved

Section 243(a) of the Immigration and Nationality Act, 66 Stat. 163, 212 [8 U.S.C. 1253(a)], provides in pertinent part:

> "Thereupon deportation of such alien shall be directed to any country of which such alien is a subject, national, or citizen if such country is willing to accept him into its territory * * *."

Statement

Petitioners are each aliens who have been ordered deported from the United States for having overstayed their leave to remain in this country (R. 9, 100). None of them designated the country to which they wished to be deported

(R. 125). Pursuant to Section 243(a) of the Immigration and Nationality Act, 66 Stat. 212, 8 U.S.C. 1253(a), their deportation must be directed to the country of which they are subjects, nationals, or citizens, if that country is willing to accept them into its territory, before deportation is sought elsewhere.

It was established during their deportation proceedings by their own admissions that each petitioner was born on the mainland of China and is a national or citizen of "China". No evidence was taken in any of the proceedings regarding citizenship in the "Republic of China", nor was evidence elicited or determination made, during the proceedings to establish the meaning of the term "China". Neither was there evidence introduced to establish the nationality law of the "Republic of China" or of "China" (R. 13-89). Findings were entered by the special inquiry officers who conducted the various deportation hearings that each petitioner is a "native and citizen of China" (R. 18).*

Thereafter, without notice to the petitioners, the Immigration and Naturalization Service inquired of the Republic of China whether the government of that country would be willing to accept the petitioners into its territory (R. 19). That country declined to accept the aliens in *Lee Wei Fang, et al.* v. *Kennedy* in the case below (R. 19). However, it indicated its willingness to accept on Taiwan (Formosa) the aliens in *Wang Siang-Ken, et al.* v. *Kennedy* below, and it advised the Immigration and Naturalization Service, *ex parte*, that passports would be issued for each of the latter group of aliens. The Service then inquired of the British Crown Colony of Hong Kong whether the

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* The administrative records relating to the pleadings, evidence, and findings relating to this issue are set forth at R. 12-20 for Lee Wei Fang, only, inasmuch as his is typical of all the cases.

government of that country would accept petitioners whom the Republic of China had declined. The British Crown Colony indicated that it was willing to receive the remaining petitioners at Hong Kong (R. 10, 11, 20).

In due course, the Immigration and Naturalization Service directed the deportation of petitioners in the *Lee Wei Fang* case to Hong Kong, and those in the *Wang Siang-Ken* case to Formosa (R. 2, 20, 94), described variously in the notices given to the petitioners for the first time as "Taiwan", "Formosa" or "The Republic of China on Formosa" (R. 2, 10, 94).

Each of the petitioners then brought actions in the District Court below to obtain judgments that the Attorney General may not deport him to the country directed (R. 2, 94). Each petitioner alleged that he was born in China, that he is a native of China and a subject, national and citizen of the People's Republic of China; that he is not a subject, national or citizen of the Republic of China; that no administrative findings were made that he is a subject, national or citizen of the Republic of China; that the Attorney General neither directed his deportation to the People's Republic of China, as the country of which he is a subject, national or citizen, nor attempted to ascertain whether the government of that country would accept him into its territory.

In addition, the petitioners in *Lee Wei Fang* alleged that none of them is a subject, national, or citizen of Hong Kong, and those in *Wang Siang-Ken* alleged that none of them is a subject, national, or citizen of Formosa (R. 4, 95).

No answers were filed by the Attorney General below. Instead he moved, as did petitioners, for summary judgment based upon the administrative records relating to each petitioner (R. 4, 6, 96). Those records, so far as relevant here, establish the allegations of the petitioners that ad-

ministrative findings had been made that each of them is a "native and citizen of China", but that there was neither evidence in the deportation proceedings nor findings that any of them is a subject, national or citizen of the Republic of China; that, nonetheless, the Attorney General attempted to effect deportation of the petitioners to that country (R. 12-89).

In his Statement of Material Facts and in his Statement in Opposition to Plaintiffs' Motion in the District Court, the Attorney General did not dispute the absence of evidence or findings that the petitioners are nationals of the Republic of China (R. 8, 9). Rather, he asserted for the first time anywhere that the "Administrative finding that plaintiff is a native and citizen of China refers to the Chinese Nationalist Republic, the government of which is now situate on Formosa" (R. 8).

Petitioners' allegation that they are subjects, nationals, or citizens of the People's Republic of China was met with the "legal postulate" that within the meaning of Section 243, of the Immigration and Nationality Act, 8 U.S.C. 1253(a), they are citizens of the "Chinese Nationalist Republic" because the United States recognizes that government and not "the Chinese Communists' seizure of the mainland of China" (R. 10).

Summary judgments were entered for the Attorney General (R. 123).

On appeal to the United States Court of Appeals for the District of Columbia Circuit the judgments were affirmed by a divided court (R. 124-144).

The majority opinion held that the administrative findings that the petitioners are "natives and citizens of China" are properly construed as findings that they were natives and citizens of the Republic of China" (R. 127

128). This determination is not made, the Court declared, "exclusively by the geographical spot where one was born, but * * * political matters must be considered. In the case of citizens of China, for the purposes of deportation from the United States, they are properly regarded as citizens of the government of their country which the United States recognizes, at least in the absence of a showing that they in fact support and give allegiance to the government not recognized by the United States" (R. 130).

The Attorney General's determination, the lower court held "is fully supported by the facts appearing in the certified administrative files"[1] (R. 133). Those facts as set forth by the Court are that (1) the petitioners "although offered the opportunity to name the place where they wished to be deported (did not choose) the mainland of China * * * (and a number) indicated affirmatively that they did not choose to go there"; (2) some petitioners were "in possession of passports issued by the Republic of China"; others had "entered the United States as seamen on ships flying the flag of the Nationalist Government"; (3) "* * * all had voluntarily left the mainland and the jurisdiction of Red China" (R. 133-134).

"The Attorney General was certainly warranted in concluding on these facts alone" the Court of Appeals stated, that (those petitioners to be deported to Formosa) "bore allegiance to and regarded themselves as citizens of the Republic of China rather than of Communist China" (R. 135).

As to the petitioners who were declined by the Republic of China and thereafter ordered deported to Hong Kong,

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[1] Such "files" are to be distinguished from the deportation proceedings, which are of record. Cf. 8 C.F.R. 243.1 (1958 ed.) with 8 C.F.R. 242a, 242.15, 1962 supp.

the Court of Appeals found (1) that two had stated under oath that they were citizens of the Republic of China; (2) that nine others had "indicated to the Immigration and Naturalization Service that they adhered to the principles of the Government of Free China"; (3) that still other petitioners had stated that they did not want to be returned to the Chinese mainland; (4) that six petitioners, "those who did not affirmatively indicate adherence to Nationalist China and who did not affirmatively state that they did not wish to be returned to the mainland * * *", held either Hong Kong Seaman's Identity Books, or a Hong Kong Seaman's Discharge Book. "In the absence of anything else, the conclusion is inescapable that those with Hong Kong papers", the Court declared, "had escaped to or gone to Hong Kong, that they do not regard themselves as citizens of Red China * * *" (R. 134-135).

The one remaining petitioner, not accounted for in the above summary, had entered the United States on a visitor's visa. As to him, the Court of Appeals stated, "Although the file before us does not indicate where the visitor's visa was granted, the Attorney General could fairly assume—if he did not possess positive information—that it was obtained in Hong Kong (since Taiwan did not accept him) and therefore that he had severed himself from adherence to Red China" (R. 136).

As a further ground for its holding, the Court of Appeals declared that the petitioners "are in no position to ask relief from a court of equity" because they "do not desire to be deported to Communist China, and would resist any such action if it were ordered" (R. 137-138).

The dissenting opinion (Wright, J.) urged that the petitioners were entitled to a "hearing with findings supported by evidence in the record" on the question of the country to

which they are to be deported. The dissent did not agree that records in these cases support a finding that the petitioners are subjects, nationals or citizens of Nationalist China, observing that there is little evidence in the records on this question beyond the admissions that the petitioners were born on the mainland of China and that they are citizens of China. "The fact that many of the deportees express dislike for, and fear persecution by, the Communist government", Judge Wright noted, "* * * is not an acknowledgment of allegiance to the Nationalist Government" (R. 140).

"There is no proof as to the 'China' the (petitioner) or the Special Inquiry Officer had in mind * * *. There is in the record no evidence whatever as to the municipal law of Nationalist China. Consequently, we are uninformed as to whether, under the law of that country, these aliens, in particular, are subject nationals or citizens thereof, or whether, in general, Nationalist China claims as subject nationals or citizens all persons born on the mainland. Under these circumstances", Judge Wright's dissent states, "* * * the conclusion that these (petitioners) are subject nationals or citizens of Nationalist China it not only without support in the record, but is likewise without support in the findings themselves" (R. 140-142).

With regard to the majority's view that the Republic of China must be held to be the country of the petitioners' citizenship because it is the government "which the United States recognizes" (R. 130), the dissent observed that "Time and again the Department of Justice has attempted to deport aliens born on the mainland to Communist China" (R. 142).

Nor did the dissent agree that petitioners could not seek relief from a court of equity. "Congress * * * did not

give the Executive an unrestricted hand in the deportation of aliens", Judge Wright declared, "* * *" Their effort to assert whatever rights they may have under the Immigration and Nationality Act of 1952 can[not] preclude consideration of their application to a court of equity for enforcement of due process of law" (R. 144).

Reasons for Granting the Writ

The decision below raises three important questions affecting proceedings for the deportation of aliens from the United States.

I

The first is whether the administrative findings are sufficient here to support the directives that the petitioners be deported to the Republic of China. None can doubt that the requisite finding, upon which the orders of deportation are bottomed, that the petitioners are "citizens and natives of China" is so ambiguous that it is uncertain whether it is intended to refer to that China known as the Republic of China, which is located on Formosa; or to that China known as the People's Republic of China, which occupies the Chinese mainland.

The administrative use of the term "China" has been construed variously by the Courts. The Second Circuit in *United States ex rel. Tom Man* v. *Murff*, 264 F. 2d 926, 928 (1959), took the term to mean, as did the Immigration and Naturalization Service, the mainland of China. See also *Leong Leun Ho* v. *Kennedy*, 309 F. 2d 467, concurring opinion, 475 (2nd Cir., 1962). So too has the District of Columbia Circuit in earlier cases. See *Rogers* v. *Lu*, 104 U.S. App. D.C. 374, 262 F. 2d 471, affirming *Lu* v. *Rogers*, 161 F. Supp. 320 (D. D.C., 1958); and *Chien Chan Chu* v. *Brownell*, 101 U.S. App. D.C. 204, 247 F. 2d 799 (1957). Yet, in the decisions below, relying upon a statement in its

opinion in *Dai Ming Shih v. Kennedy*, 111 U.S. App. D.C. 380, 297 F. 2d 791 (1961), cert. denied 369 U.S. 844 (1962), where the issue here was not raised (297 F. 2d at 792), the lower court has construed "China" to mean "Republic of China".

If the courts have had divergent constructions of the term "China", the Immigration and Naturalization Service has not. For until the post litem motam contention below that "'China' refers to the Chinese Nationalist Republic, the government of which is now situate on Formosa" (R. 8), the Immigration and Naturalization Service had consistently used the term "China" to refer to the Chinese mainland and had relied upon the terms "Republic of China on Formosa", "Formosa" or "Taiwan" when referring to the entity governed by the Republic of China (R. 66, 67, 105, 109, 110, 118, 122).

That the District of Columbia Circuit adopted a questionable method to determine the meaning of the term "China" seems plain. It is in conflict with the fixed principles which guide the judicial review of administrative decisions: "We must know what a decision means before the duty becomes ours to say whether it is right or wrong", *United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 294 U.S. 499, 511 (1935). See also *Automatic Canteen Co. v. Federal Trade Commission*, 346 U.S. 61, 81 (1952).

The impropriety of disposing of the petitioners' contentions that they are citizens of the People's Republic of China by a judicial construction of the term "China" is underscored in view of the administrative proceedings here. Throughout the proceedings, the term "China" consistently meant the mainland, which, of course, is governed by the People's Republic of China. Since that "China" has been determined to be a "country", *United States ex rel. Mazzei v. Shaughnessy*, 218 F. 2d 316 (2nd Cir., 1954), it could

be fairly assumed in these deportation proceedings to be the country of the petitioners' nationality rather than the Republic of China.

At no time until the hearing in the District Court below upon cross motions for summary judgment, when the administrative records were filed with the court, did the petitioners have notice that the Immigration and Naturalization Service deemed the Republic of China to be the "China" of their citizenship. The disposition which the District Court made of the petitioners' allegations, undenied by answers, that they are not citizens of the country to which the Attorney General sought to deport them precluded them from establishing in any forum the truth of their claims. It seems needless to say that this does not comport with the due process required to be afforded to aliens before they may be deported from the United States. *Japanese Immigrant Case*, 189 U.S. 100, 101 (1903).

II

The second question posed by the decision below is the nature of the evidence required to establish the nationality of deportable aliens for the purpose of determining the country of deportation. This issue is one of recurring importance in deportation proceedings because a foreign nationality is a predicate to a finding of alienage.

It has long since been settled that deportation may not be sustained without evidence to support the findings, *United States ex rel. Vajtauer v. Commissioner*, 273 U.S. 103, 106 (1927), and without findings consistent with the requirements of the statute, *Mahler* v. *Eby*, 264 U.S. 32, 43, 45 (1924). These requirements are as applicable to the determination of the country to which an alien shall be deported as they are to an administrative decision that he shall be deported. *Lewis* v. *Frick*, 233 U.S. 291, 304 (1913), citing

Lavin v. *LeFevre*, 125 Fed. 693, 696 (9 Cir., 1903), and *United States* v. *Ruiz*, 203 Fed. 441, 444 (1913); *Wenglinsky* v. *Zurbrick*, 282 U.S. 798 (1930), reversing 38 F. 2d 985 (6 Cir., 1930); *Bilokumsky* v. *Crissman*, 335 U.S. 840 (1948), reversing 164 F. 2d 412 (5 Cir., 1947), cf. dissenting opinion 164 F. 2d 414; *United States ex rel. Karamian* v. *Curran*, 16 F. 2d 958 (2nd Cir., 1927); *Saksagansky* v. *Weedin*, 53 F. 2d 13 (9 Cir., 1931); *United States ex rel. Hon Lee* v. *Sisson*, 232 Fed. 559 (2nd Cir., 1916).

As noted above, in the administrative proceedings here both the petitioners and the special inquiry officers of the Immigration and Naturalization Service, who made the determinations of nationality requisite for the ultimate directive specifying the country of deportation,[2] referred to the country of nationality as "China". Other than the petitioners' admissions that they were born on the mainland of China and that they are citizens of "China", there is little evidence in the record to establish nationality or citizenship. There is no evidence at all to establish the municipal nationality law of the Republic of China. See *Black Diamond* v. *Stewart & Sons*, 336 U.S. 386, 396 (1949); *United States ex rel. Zdanic* v. *Uhl*, 137 F. 2d 858 (2nd Cir., 1943); *United States ex rel. Jelic* v. *District Director*, 106 F. 2d 14 (2nd Cir., 1939); Cf. *Dulles* v. *Katamoto*, 256 F. 2d 545, 547 (9 Cir., 1958). It was not until the administrative determinations of nationality were made and the deportation proceedings were closed that the term "Republic of China" appears in the administrative files. Where it does appear it is in contradistinction, significantly, to the term "China" (R. 10, 132).

Indeed, the Attorney General did not contend below either in the District Court or in the Court of Appeals that his

[2] See Infra at pp. 14-15.

determinations that the petitioners are nationals of the Republic of China are based either upon evidence to that effect in the administrative proceedings or upon explicit findings. His position, set forth in the District Court in his Statement of Material Facts as to Which There is no Genuine Issue, is that he proceeded upon "the legal postulate that the Chinese Nationalist Republic is the country of which the (petitioners) are citizens" because the United States "recognizes the Chinese Nationalist Government as the only government of China * * * (and) * * * is of course the government of the Republic of China" (R. 10).

The Court below accepted the Attorney General's legal postulate for the purpose of construing his finding that the petitioners are citizens of "China" to mean that they are citizens of the "Republic of China" (R. 127-128), but it stopped short of holding that citizenship may not be held in unrecognized countries (R. 130). However, because legal postulates, needless to say, may not do service for evidence, the Court saw fit to search the "certified administrative *files*" (emphasis supplied) for "facts" to support "the Attorney General's action in treating the Nationalist Government of China on Formosa as the government and country of which the (petitioners) are natives and citizens" (R. 133).

This is not the method which the statute and the regulations fairly intend for the determination of an alien's country of citizenship.

The designations of the country to which the petitioners are to be deported were made here pursuant to 8 C.F.R. 243.1(b) (1958 ed.), which gives this authority to the District Directors.[3] No procedures for making the designations are

[3] The pertinent regulations have since been modified to vest authority in the special inquiry officer to specify the country of deportation in the "order of deportation," during the deportation proceeding upon record evidence. 8 C.F.R. 242.17(c); 242.18(c). (1962 Supp.)

specified, but 8 C.F.R. 243.1 requires that the "warrant of deportation shall be based upon the final order of deportation." That order couples a finding of the foreign nationality (as here that the petitioners are natives and citizens of China) with a finding of illegal presence in the United States. Pursuant to Section 242(b) of the Immigration and Nationality Act, 66 Stat. 209, 8 U.S.C. 1252(b) and 8 C.F.R. 242.17-18 (1958 ed.), the orders must be based upon reasonable, substantial, and probative evidence.

The Court below itself observed that it was "reviewing, in this proceeding, the orders of deportation entered by the Attorney General on the evidence adduced before the Attorney General" (R. 137). Even the most favorable review of the facts which the District of Columbia Circuit elicited from the administrative files, however, fails to justify the holding required below that the orders are based upon "reasonable, substantial, and probative evidence".

Proof of nationality in the Republic of China surely is not established by the array of facts which the District of Columbia Circuit has set forth in its opinion—whether it is the petitioners' express unwillingness to return to the mainland of China, their entry into the United States on Hong Kong Seaman's Books, their sailings on Chinese nationalist vessels, the issuance of passports by the Republic of China absent evidence that the passports were issued upon the basis of nationality, or, to cap it all, a compounded assumption that a visitor's visa issued to a Chinese alien was obtained in Hong Kong, and that such a visa indicates a severance from "adherence to Red China". Whatever these facts may indicate as to lack of citizenship in the People's Republic of China, they plainly do not measure up to reasonable, substantial or even probative evidence of nationality in the Republic of China.

The evidentiary basis for administrative findings is a

recurring problem, of course, both for the conduct of administrative proceedings and for determining the scope of judicial review. At least from *Universal Camera Co.* v. *Labor Board*, 340 U.S. 474 (1950), to *Gastelum-Quinones* v. *Kennedy*, 374 U.S. ——, (decided June 17, 1963), this Court has had occasion to determine the sufficiency of such evidence.

The issue here is of paramount importance because the determination of the proper place of deportation may have as much consequence for a deportable alien as does the finding of his deportability itself. Especially is this so, as here, where one determination rather than another may give the alien certain statutory benefits. *United States ex rel. Fong Foo* v. *Shaughnessy*, 234 F. 2d 715 (2nd Cir., 1955) (Motion for Stay, Frank J.); *Leong Leun Do* v. *Esperdy*, op. cit. concurring opinion, Lumbard, C. J., 309 F. 2d at 477-479; dissenting opinion below (R. 143-144).

III

A third question is raised by the view of the Court below that the petitioners are precluded from seeking relief in a court of equity because they do not desire to be deported to Communist China, and would resist any such action if it were ordered (R. 137-138).

This issue is of more than passing importance not merely because of the implications of the holding below but because of the recent decision of the District of Columbia Circuit in *Marcello* v. *Kennedy*, —— U.S. App. D.C. ——, 312 F. 2d 874, 877 (1962), cert. denied May 27, 1963 (No. 931).

In the latter case, as well as in the decision below, the Circuit Court relies upon the principle set forth in *Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U.S. 293, 300

(1943), that courts may withhold declaratory relief "upon established equitable principles". The standard which the District of Columbia Circuit has imposed below, however, is in plain conflict with the provisions of the Administrative Procedure Act, 5 U.S.C. 1009, 60 Stat. 243, and would defeat virtually all judicial review of the failure to comply with the statutory priorities for deportation established by Section 243(a) and (b) of the Immigration and Nationality Act, 8 U.S.C. 1253(a) and (b), 66 Stat. 212, 213. The Administrative Procedure Act provides that "any person adversely affected * * * because of any agency action * * * shall be entitled to judicial review thereof"; 5 U.S.C. 1009(a). The reviewing court is given the power to "set aside agency action * * * found to be * * * not in accordance with law * * * and unsupported by substantial evidence * * *", 5 U.S.C. 1009(e).

The lower court would read into the conditions for obtaining judicial review that aggrieved persons have good faith alternative remedies, viz., that they be willing to agree to their deportation to Communist China.

Contrary to the assumption of the District of Columbia Circuit the petitioners do not seek as their relief an order that they be deported to the People's Republic of China, nor are their contentions "tongue-in-cheek" (R. 138). Their pleadings plainly state that they complain for judgment declaring that the Attorney General may not deport them to Formosa or to Hong Kong as citizens or nationals of the Republic of China (R. 4, 95). This remedy is expressly afforded them by the Administrative Procedure Act if deportation to either Hong Kong or Formosa is not effected by the Attorney General in compliance with the statutory requirements set forth in Section 243(a) of the Immigration and Nationality Act.

A resolution of the reach of the doctrine in *Great Lakes Dredge and Dock Co. v. Huffman, supra*, as it affects the review of administrative decisions under the Administrative Procedure Act seems warranted by this Court, in view of the portentous impact which the decision below may have upon review not only of deportation proceedings, but of all other administrative agency determinations as well.

Conclusion

For the foregoing reasons, we request that certiorari be granted.

Respectfully submitted,

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